

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
November 18, 2010

Meeting Began At: 3:02 P.M.

Meeting Ended At: 4:35 P.M.

Members Present: Jayne Snyder, Chris Beutler, Tim Clare

Item 1 - Introductions and Notice of Open Meetings Law Posted by Door

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Public Comment and Time Limit Notification

Snyder stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Item 3 – Approval of the minutes from the JPA meetings held October 19, 2010 and November 10, 2010

Snyder asked for any corrections or changes to the minutes. Clare noted that Marc Boehm's name was misspelled in the November 10, 2010 minutes. With that change, Beutler motioned for approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 – Approval of Payment Registers

Don Herz brought forward four weekly payment registers for the Board's approval. The larger amounts included the following: \$1.25 million payment to Union Pacific to close on their property; \$37,500 payment to Moody's which is the last cost of issuance on the first bond series; \$1.4 million repayment to the University of Nebraska Charitable Gift Fund that had been agreed to if the arena vote passed.

Snyder observed that it would be helpful if the Board could look at these expenditures in relation to the budget as some of these activities occurred before the JPA was formed. Herz explained that the only payment agreed to prior to the formation of the JPA was to the University of Nebraska Charitable Gift Fund, everything else was post May 22, 2010. These payments are being made from the money that was secured from the bonds.

Clare would like to have a running balance sheet showing where the expenses are coming from and actual costs compared to pro forma. He would like to ensure the Board stays within the budget. Herz can generate a pro forma balance sheet that will show cash balances and plans on adding a category to the expenditure reports that would identify the contract commitments that have been made.

Clare made a motion to approve the payment registers. Beutler seconded the motion. Motion carried 3-0.

Item 5 – Review of the October 2010 Expenditure Reports

Herz explained that the Construction Expenditure Report shows actual expenditures against the \$321 million capital budget. Total expenditures through the end of October were \$4,750,040. Herz would like to add the commitments that have been made for various contracts to this report.

The Operating Expenditure Report shows the operating expenses for the current fiscal year. Total expenditures through the end of October were \$47,614. Herz pointed out that the second page identifies a payment to US Bank for the repayment of the line of credit. At the next Board meeting, Herz will bring forward a budget revision because that item was not budgeted for. The budget revision will also include interest payments that will be coming up in December and July on the bonds. Now that the second series of bonds has been issued, Herz will know precisely what those costs will be.

Clare would like this report to show where we are relation to what was anticipated. Snyder added that as the Board went through the agenda and the backup documentation, they noted that some of the dollar amounts were changing or increasing. They want to make sure that the budget matches what is being approved. Herz agreed and noted that the total budget includes the construction costs and the soft costs combined, but he will try to break those out so that the Board can see those specific items.

Snyder asked for any comments from the public. No one came forward.

Item 6 – Report on the November 17th sale of the WH JPA's Series 2010B and 2010C bonds in the amount of \$100 million

Herz reported that the second series of bonds, a total of \$100 million, were sold yesterday. Approximately \$32 million were Economic Recovery Zone Bonds which receive a 45% federal subsidy and \$65 million were Build America Bonds which receive a 35% federal subsidy. The blended interest rate between the two is 3.75%.

Scott Keene informed the Board that there were five bidders on the Build America Bonds and only one bidder on the Recovery Zone Bonds. The Recovery Zone Bonds had a longer maturity and in a difficult market bidders can be a little bit pickier about what they buy, and the longer maturity suffered from that. The Build America Bonds had a yield of 3.73% and the Recovery Zone had a blended yield of 3.79%. Taken with the 3.2% that was received on the first bond series in August, the combined total cost of capital is under 3.48%. This was a very good result

for the City, the University and the JPA. If they had gone to market yesterday with a comparable tax exempt financing, the rates would have been approximately 4.5% to 4.8%. The market is expected to flux over the next two months as there will be a high volume of Build America Bonds coming to market. This financing stood out against a number of others due to the name of the financing, the structure and the bond ratings.

Snyder asked how much the savings will be due to the reduced interest rates. Keene answered that compared to the initial pro formas with a projected 5% borrowing rate, the savings will be over \$80 million over the life of the bonds. The savings on this financing versus a tax exempt financing is anywhere from \$22 million to \$27 million.

Snyder asked who purchased the bonds. Keene disclosed that Wells Fargo purchased the Recovery Zone Bonds and were also the winning bidder of the series A bonds issued in August. R. W. Baird out of Milwaukee was the winning bidder of the Build America Bonds. The bond issue will be settled on December 1st and the proceeds will be delivered that day.

Snyder inquired as to how these are selling to the public. Keene explained that there isn't a lot of information on that right now but there will be more information in about a week. He will see when the bonds show up in the secondary market and can watch the trading on some websites.

Snyder asked for any comments from the public. No one came forward.

Item 7 – Discussion of Insurance

Dan Marvin and Bill Kostner, Risk Manager for the City of Lincoln, came forward to discuss the insurance options they have been looking at. Kostner has been working with the insurance brokers at Aon on general liability coverage. They are looking at an Owner's Interest Policy that would provide the JPA with the insurance required in the Burlington Northern agreement, specifically \$25 million per occurrence and \$50 million aggregate. Aon put this information into the market place and they are hoping to get some firm pricing within the month. A selection committee had looked at an Owner Controlled Insurance Program (OCIP) in which the JPA would control all insurance, workers compensation, and general liability for all vendors. The committee decided unanimously to recommend against that plan because there were some issues that would prevent an OCIP from being successful. In the mean time, Burlington has accepted the contractor's access to start the sanitary sewer work.

Marvin and Kostner explained that they are also working on the following insurance coverage:

- Environmental – Marvin and Kostner have received a good policy back from Aon that is reasonably priced and would give the JPA protection in the event environmental pollution comes up at some point in the future. This will be addressed later in the meeting.
- Professional Liability Insurance (OPPI) – This is insurance over the design work. There is some coverage provided by the design firm and this policy would be an umbrella over that. Aon has been asked to explore this and gather more information to bring to the Board.

- Railroad Protective – This insurance is required by the Burlington Northern agreement. It is essentially just coverage for the railroad and does not do anything for the JPA. Kostner is working to provide that coverage and it should be secured shortly.
- Builders Risk – This insurance would provide coverage for a project, construction and materials on site before it gets turned over to the JPA. The City's property insurer and one of the largest property carriers, FM Global, is very interested in that. Kostner is asking Aon to go out to the market place and will report that information to the Board in the future.

Clare asked how the competitive bids are being obtained. Kostner explained that he goes to Aon and requests that they go out to the market place. A specific RFP is not issued for every type of coverage as the City has contracted with Aon through a competitive bid process to go out to the market place, gather all proposals and provide those costs.

Beutler inquired if there were any categories or types of insurance that may have been considered and rejected. Kostner stated that the only one was the OCIP which was looked at and rejected.

Clare asked if Kostner had consulted with any colleagues providing risk management services in other cities. Kostner pointed out that he is the past president of the Public Risk Management Association which is a national association. Prior to starting the OCIP RFP, he had had many discussions with other members and also touched base with the University of Nebraska. They had some mixed results with OCIPs as there are some advantages and disadvantages to it. The selection committee weighed that information and recommended against it.

Clare questioned if Kostner asked his colleagues that have built arenas for guidance regarding any insurance they may or may not have provided. Kostner explained that he did talk with them regarding some of the coverage he is currently looking at and possibly tying others into the builder's risk. He could not recall any other specific items. Marvin added that they are open to checking what the practices have been at other arenas and doing some comparisons. Snyder suggested talking to the Construction Manager at Risk, Mortenson, as they may have some good advice.

Snyder asked for any comments from the public. No one came forward

Item 8 – Discussion of the Letter to the JPA from Jim Martin, Benham-SAIC

Jim Martin with the Benham Companies informed the Board that three and a half years ago Benham was acquired by Science Applications International Corporation (SAIC). Their company has since acquired R. W. Beck and spun off SAIC's architects, engineers, environmental scientists and technicians into a subsidiary called SAIC Energy Environment and Infrastructure. The group originally started out with 1,200 architects and engineers but today has a little over 4,000. Martin reassured the Board that nothing is going to change but as they are now close to four times their original size, the services being offered will be more robust. The name of the company will be SAIC Energy Environment and Infrastructure. Jim Martin and

Aaron Young will continue to perform the same duties and Martin will continue to lead the owner's agency practice for the company.

Snyder asked for any comments from the public. No one came forward.

Item 9 – Bill No. WH 10-16 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency for the TEUP Contract and Amendments 1-5 with Olsson Associates

Rick Peo explained that this resolution is a formality as the work under this agreement has basically been completed. However, there are some carry on activities still being conducted by Olsson Associates as it relates to this agreement. Amendment No. 6 was previously approved by the Board and it was felt that a full assignment of the original agreement and the first five amendments should be done.

Snyder asked for any comments from the public. No one came forward. Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 10-17 Resolution to Approve Amendment No. 7 to the TEUP Contract with Olsson Associates

Roger Figard informed the Board that although they are very close to having the professional services team on board, there is still some transition time in which additional testing and surveying needed to be done. Amendment 7 of the TEUP contract will be the transition out of the previous engineering and coordination work. This amendment allows for the team that did the design on the sanitary sewer work to provide some construction phase services and testing as needed. It is Figard's intent that this will be the last amendment to the TEUP contract. Although there isn't an exact completion date, he estimates that the work will be completed by the end of the calendar year. Any activity not required will not be authorized and that money would then be available for other activities.

Clare asked if the increase of \$164,000 was correct. Figard explained that there is \$188,000 worth of work in Amendment 7 but there was about \$28,000 of unused funds from Amendment 6 that was transferred in. The total contract would be increased to just a little over \$2.1 million. Clare asked how that fits into the budget. Figard stated that these activities are a part of the overall budget and will be allocated to the specific design or project it is accounted to.

Snyder pointed out that this relates to the issue that was discussed earlier. The Board has a budget but it is not detailed enough to include some of the items that are being approved today. Figard noted that the team has been working on breaking each of the major categories into individual projects and they are getting very close to laying all of those out. Jim Martin came forward and added that he has been pushing to get the survey and geotechnical work done as quickly as possible. The quickest way to complete it was through an amendment to the TEUP contract. Clare explained that he did not disagree but wanted to know if the increase is within what was budgeted. If so, he would like detailed information so that the Board can see it in black and white. Figard advised that the increase is within the budgeted amount.

Snyder asked for any comments from the public. No one came forward. Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0

Item 11 – Bill No. WH 10-18 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency for the SMG Agreement

Rick Peo stated that the agreement being assigned is a contract with SMG, the current operator of Pershing Auditorium for the City of Lincoln. The City felt it was necessary to have SMG's input and advice on operational issues as the arena is being designed. SMG has been hired perform that service and work with the architects and University to make sure the arena that will function correctly.

Clare inquired if Tom Lorenz will be the consultant. Peo indicated that Lorenz is working as a consultant for SMG and he has the expertise to participate in those discussions. Dan Marvin added that as a part of the contract, SMG has flown in people who are experts in various aspects of the building. They will fly in people to specifically talk about the design of the food service, down to the location of the drains. As DLR goes through the design work, SMG will review it to have an efficient design that delivers value for the building both on the operating side and for the operator that will eventually come in.

Clare asked if Tom Lorenz will be the consultant working on behalf of SMG. Marvin confirmed that he is and added that Lorenz will help coordinate and use the power of SMG to review the design elements. There will be more than one person working on it as SMG has flown in other people for programming meetings and to provide input to DLR. Rick Peo added that Lorenz is SMG's representative in Lincoln and the local contact on the contract.

Clare questioned who the JPA would be paying. Marvin answered that payments will go to SMG Corporate.

Snyder asked for any comments from the public. No one came forward. Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0

Item 12 – Bill No. WH 10-19 Resolution to Approve a Letter of Agreement Between the West Haymarket Joint Public Agency and District Energy

Dan Marvin came forward to provide information regarding this agreement for the Board to think about over the next month. There isn't a line item for this \$2 million expenditure in the documents that have been disclosed to the public. One of the things built into the pro forma numbers for SMG was a capital cost for heating and cooling that District Energy would provide. That would be a payment of about \$400,000 a year. However, there are multiple ways in which the construction of District Energy can be facilitated and there needs to be a discussion to determine the best way to accomplish that.

Snyder noted that the agreement states the amount isn't to exceed \$2.5 million and she questioned if it was in the budget. Marvin explained that it is not in the line items that identify all of the different costs, but it is embedded into the SMG pro formas. As the operator, they would be in effect saddled with an aid to construction line item to pay for the heating and cooling elements that District Energy will provide. A determination needs to be made if those costs get paid directly to District Energy or if it is done through the JPA. The JPA's borrowing costs are pretty low, so Marvin would like to do a comparison and come back to the Board with a recommendation that provides heating and cooling in the most efficient way.

Beutler made a motion to delay this item until the next meeting. Clare seconded the motion. Motion carried 3-0.

Item 13 – Bill No. WH 10-20 Resolution to approve a Memorandum of Agreement between the West Haymarket Joint Public Agency and Nebraska Department of Environmental Quality (NDEQ)

Rick Peo explained that this contract is with the Nebraska Department of Environmental Quality to complete a voluntary environmental remediation plan of the West Haymarket site. Following completion of the plan, NDEQ would issue a No Further Action Letter that would cease the liability issues with the property. It is also our responsibility to pursue this activity in accordance with the Burlington Northern agreement.

Clare asked what would happen if NDEQ does not issue the No Further Action Letter. Peo answered that NDEQ will approve the plan up front and work with the City to implement it. If the criteria and guidelines are satisfied and met, there should be no problem issuing the letter.

Snyder asked for any comments from the public. No one came forward. Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0

Item 14 – Bill No. WH 10-21 Resolution to approve an Agreement between the West Haymarket Joint Public Agency and Olsson Associates for Construction Design Services for the Haymarket Infrastructure Design Project and authorizing the acquisition of all necessary rights-of-way, easements or other property interest in land by purchase if possible, condemnation if necessary, in order to implement those projects included within the Haymarket Infrastructure Design Project

Roger Figard advised the Board that in addition to the arena, there is a lot of infrastructure to be designed including streets, water, sewer, parking lots and pedestrian structures. A full Request for Proposals was put out to the engineering community for this project and proposals were received from a number of individual firms as well as firms that teamed together. A committee reviewed the proposals and recommended interviewing two teams of firms. Following the interviews, the committee recommended selecting the team made up of Olsson Associates, Schemmer, Sinclair Hille, Davis Design, Farris Engineering, Benesch (formerly HWS), and Clark Enersen. This team entails a complete group of design professionals that can cover all aspects of the project.

A Negotiation Committee, lead by Vince Mejer, reviewed the contract and worked diligently to bring these numbers forward that Figard feels confident recommending to the Board. The contract is for a little over \$2.7 million and provides for general project design and coordination for all of the projects. It also includes specific design for four projects and a traffic engineering study. The contract is intended to be set up and managed much like the TEUP contract. As additional design or construction phase services on the other 11 projects are needed, they can be negotiated at the sole discretion of the JPA. The projects and costs included in this contract are as follows:

- General Design Coordination and Support (Appendix A-1) - The team will provide coordination with the arena and all the projects designed over the three year period to ensure there aren't any conflicts. The total project cost is \$1.76 million.
- USPS Parking Lot Reconstruction (Appendix A-2) – The parking lot adjacent to the Post office needs to be reconfigured due to sanitary sewer reconstruction in that area. This will also include the appraisal and negotiation of that property in order to acquire it. The total project cost is about \$94,000.
- 10th & Salt Creek Roadway Improvements (Appendix A-3) – This project includes design of the proposed double roundabouts and other improvements in this location. The goal would be to have this in place in order to provide additional access from the north to the arena during its construction. In addition there will need to be coordination and interaction with the University and Champions Club in order to purchase right-of-way. The total project cost is just over \$330,000.
- Initial Haymarket Site Preparation (Appendix A-4) – This project entails having final design completed in order to have everything moved, graded and ready for the arena and redevelopment in the area. The total project cost is about \$200,000.
- M and N Streets (Appendix A-5) – This includes design for improvements to M and N Streets and some turn lanes on 9th Street. These streets would provide an additional route for construction activity to come into the West Haymarket from the south. The total project cost is \$240,000.
- Traffic Analysis (Appendix A-6) – The traffic analysis will ensure that the designs completed in the early planning period are still valid. Traffic counts and congestion will be looked at so that people can be efficiently moved in and out of the area. The total project cost is about \$85,000.

Peo pointed out that another provision in the resolution is the authorization to acquire the properties that are identified. That is necessary in order to begin appraisal work and begin discussions with property owners.

Figard informed the Board that the sum of the projects and overall support is just over \$2.7 million. Those dollars are included in the original West Haymarket budget, allocated under the different roadway or utility components. This is a cost-plus contract as it includes the effort to get the projects completed at an hourly rate with an overhead rate applied. The consultant has to produce a deliverable that will be reviewed to determine if the work is acceptable and complete. The contract gives the JPA the authority to add the design of the other 11 projects if their performance is satisfactory, if not the JPA can authorize the work to be done in a different manner.

Clare asked if this contract was time sensitive and needed to be approved today. Figard explained that it is time sensitive as the goal is to have the design on these first projects completed so they can go to bid in March, April or May.

Beutler noted that this contract involves a number of engineering firms in the City and inquired what Olsson Associates responsibility would be with regards to those firms. Figard advised that Olsson Associates is signing the contract and will be responsible for coordinating with the other firms to make sure all of the work gets done.

Beutler then asked what is in the contract with regards to the schedule and when these projects need to be completed. Figard noted that the schedule is very aggressive. He would like to have the design for the parking lot and roads completed and out for bid in March, April or May. John Olsson came forward and stated that Appendix B outlines the schedule for the specific projects. Each has a critical timeframe associated with it showing the dates they would like to go out for bid and begin construction in order to have the site ready for the arena contractor in late summer 2011.

Snyder asked for any comments from the public. No one came forward. Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0

Item 15 – Bill No. WH 10-22 Resolution authorizing AON Risk Solutions on behalf of the West Haymarket Joint Public Agency to bind the environmental liability insurance coverage being offered by ACE

Dan Marvin and Scott Scheidel, Aon Risk Services, came forward. Marvin explained there have been discussions about exploring environmental insurance for over a year. As the election took place, those discussions continued with Aon and they determined that the premium would be reduced if all of the environmental information that was available was provided. There has been a significant amount of testing on the Burlington site to identify those areas that are impacted, but it is the unknowns that the insurance would protect against.

The information previously provided to the Board shows some of the bids that Aon brought in. They originally had three companies involved that were narrowed it down to two. Those companies gave a variety of different bids at different levels of insurance. Aon recommended that the JPA purchase a ten year policy for the Burlington property north of O Street that would provide up to \$20 million in coverage with a \$50,000 deductible. Scheidel added that there are two basic coverages, one for five years for new conditions and the other for ten years for preexisting conditions. As the JPA enters into a No Further Action agreement with NDEQ, the items that were addressed and remediated can be added back into the coverage. If the items that were addressed should manifest themselves later, there would be coverage for bodily injury, property damage or third party cleanup.

Marvin noted that there are also additional levels of insurance beyond what was originally requested. Contingent Transportation would provide protection for contaminated material as it is being transported to a disposal site and coverage for any remediation efforts prescribed by NDEQ that fail for a period of ten years.

Snyder asked if there were any annual costs aside from the \$260,000 to be paid at inception. Scheidel answered no but informed the Board that there is an additional item of coverage that is not included. Aon met with Marvin and the City's Risk Management staff on November 3rd and noted that the area defined as the future railroad corridor is excluded from coverage. They looked into adding coverage on that corridor because the Burlington agreement indemnifies them for a variety of things including the soil under their rail. It was determined that once the grading is completed, the insurance could be extended to the corridor for 10% of the premium. Rick Peo came forward and added that Burlington is taking this land and holding the City responsible for any environmental issues that might be discovered. He recommended getting insurance to protect against any unknowns in case the railroad does any work out there in the future.

Snyder asked if this item needed to be addressed today. Scheidel explained that there is a short window of time to accept this coverage. Work has begun in that area and if anything is found, the underwriters may change their offer or provide no coverage depending on what is found.

Clare questioned if Peo has compared the gaps in the Burlington contract with the coverage that the insurance will fill so that the JPA is covered on all angles. Peo stated that there will be no coverage from what is known, but that is the reason for the cleanup. The insurance will cover the unknowns but only for a ten year period. Marvin added that the unknowns are likely to be discovered as construction is occurring. The next three years will be the period with the highest likelihood to find any unknowns. The ten year coverage provides addition protection on any remediation efforts and also provides marketability as some of the property is sold off to the private sector.

In regards to the budget, \$34 million was set aside for soft costs to hire engineers and architects, which is one place that this expense could be paid out of. Marvin will bring a full breakdown of the contracts that have been signed and those that he believes will be approved to the December meeting. There is also \$2.5 million of contingency built into the environmental remediation budget that could be utilized for this expense. Either way, the costs will be covered with the budget that has been put forward.

Beutler asked if it would suffice if he put forward a motion to adopt the resolution with the added authority given to the Chair to add up to \$30,000 of additional coverage. Scheidel thought that would cover the dollar costs but noted that the only cost not in the quote is a 3% Nebraska tax that the JPA may be subject to. Bill Kostner came forward and explained that he would try to resolve that issue. He advised moving forward as the coverage is good and gives an added bit of protection to the JPA and citizens or Lincoln.

Snyder asked for any comments from the public. No one came forward. Beutler made a motion to adopt the resolution with additional authority given to the Chair to authorize up to an additional \$30,000 of insurance and the authority to resolve any other questions so long as the dollar amount doesn't exceed the original amount stated in the resolution plus \$30,000. Clare seconded the motion. Motion passed 3-0.

Item 16 – Set Next Meeting Date: Thursday December 16, 2010 3:00 P.M.

The next JPA Board meeting is scheduled for December 16, 2010 at 3:00 P.M.

Item 17 – Motion to Adjourn

Meeting adjourned at 4:35.

Prepared by: Melissa Ramos-Lammli, Engineering Services